

# EXHIBIT 1

AO 88A (Rev. 02/14) Subpoena to Testify at a Deposition in a Civil Action

**UNITED STATES DISTRICT COURT**  
for the  
District of Massachusetts

In Re: New England Compounding Pharmacy, Inc.

*Plaintiff*

v.

*Defendant*

Civil Action No. 1:13-md-02419-RWZ

**SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION**

To: Research Now Group, Inc., 5800 Tennyson Parkway, Suite 600, Plano, Texas 75024; by and through its registered agent for service, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701  
(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:  
See attachment.

Place: Norton Rose Fulbright  
2200 Ross Avenue, Suite 3600  
Dallas, Texas 75201

Date and Time:  
04/28/2016 9:00 am

The deposition will be recorded by this method: stenographic and video

☒ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material: See attachment.

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/12/2016

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Saint Thomas Health and Saint Thomas Network, who issues or requests this subpoena, are:

Adam Schramek, Norton Rose Fulbright, 98 San Jacinto Blvd, Ste. 1100, Austin, Texas 78701 (512) 536-5232  
adam.schramek@nortonrosefulbright.com

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for (name of individual and title, if any) \_\_\_\_\_  
on (date) \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_

\_\_\_\_\_ on (date) \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:



**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)****(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.





Produce the following documents at your deposition:

1. The complete file you or any affiliate maintain for the Nashville Survey.
2. Documents sufficient to show the amount billed in connection with the Nashville Survey.
3. All communications with Erich Joachimsthaler, Vivaldi Partners, Respondi, or any of their respective employees, agents, or representatives, in connection with the Nashville Survey.
4. Documents sufficient to show the substance of each of the communications with participants in the Nashville Survey. This request includes correspondence soliciting participation.
5. All contracts pursuant to which the Nashville Survey was performed.
6. Documents sufficient to show the type and amount of compensation paid to each participant in the Nashville Survey.
7. Documents sufficient to show any screening process employed to select participants in the Nashville Survey.
8. Documents sufficient to show the total number of invitations sent soliciting participation in the Nashville Survey, the total number of responses, the total number of persons starting the Survey, and the total number of persons completing it.
9. Documents sufficient to show the number of persons who accepted the invitation to participate in the Nashville Survey but who were excluded, including the reason for such exclusion.
10. Documents sufficient to identify the original source of the image contained on page 3 of the Nashville Survey as well as the person or persons who provided such image for use.
11. All documents relating to the use of the term "medical unit" in the Nashville Survey, including any consideration of alternative terms or phrases.

### **EMPIRICAL CONSUMER SURVEY IN NASHVILLE**

93. In order to validate the analyses that I have conducted so far, I asked consultants at Vivaldi Partners to conduct a quantitative commercial study and to commission an independent market research company to field the study. This section will present the methodology and results of the research. Based on the outcomes, I will provide my final expert opinion on the case at hand.

#### *Survey Background and Design*

94. To design a research setting that would allow validation of the proposed theory and conclusions, I first reviewed existing research and studies on brand portfolio and perceived linkage between brands. While some studies have tested the directions and strengths of associations and the resulting spillover effects in brand portfolios, none have tested the consumer perception of brand relationships and brand architecture in an empirical setting.<sup>75</sup> In our own work at Vivaldi, we frequently apply measures of brand equity to test similarity and overlap of brand associations between portfolio brands.

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<sup>75</sup> e.g. Lei, J., Dawar, N., Lemmink, J., (2008). Negative Spillover in Brand Portfolios: Exploring the Antecedents of Asymmetric Effects, *Journal of Marketing*, 72, 111–123.

95. The survey I oversaw employed a web-based approach, with fielding carried out by Research Now Group, Inc. In total, the survey included 620 respondents, aged 18 and older. One survey version was used which incorporated different routes respondents could be assigned. Sample for the survey was supplied by Research Now Group, Inc., who also operated the consumer research panel. I selected research now based on its industry-leading online panel size, representativeness, and its consulting affiliation with many of the world's largest and most well-known brands.<sup>76</sup> Technical support in the programming of the online survey was provided by respondi<sup>77</sup>. The survey provided the basis for different approaches and analyses, primarily relating to the conclusions drawn in the previous sub-section.

96. Based on a carefully designed screening process, I ensured that those surveyed were representative of the general population in the Nashville area, and were not overly informed about the local hospital landscape due to their professional backgrounds. The panel included respondents residing in Nashville (Davidson County) and adjacent counties. Respondents were also screened for age (older than 18), and occupation (excluding marketing, advertising, market research and health care). A demographic overview of the sample is depicted in Exhibit C.

97. The survey provided the basis for different statistical approaches and analyses.

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<sup>76</sup> <http://www.researchnow.com/en-US/~media/578E9AB322D5491CA61005CF64005C54.ashx>

<sup>77</sup> <http://www.responDI.com/en/access-panels-services>





CLOSE TO PEOPLE

## Quotation for Online Field Services

Quotation for

Jennifer Hoppe  
Vivaldi

Date: Thursday, November 05, 2015

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Joachimsthaler\_00513

# 1. Project Background

Vivaldi is planning to carry out an online survey in the USA.

## 2. Detailed Description

Sample size:	N=620
Countries:	USA
Length of interview:	Approx. 5-7 minutes
Target Group:	<ul style="list-style-type: none"> <li>• Respondent must be aged 18+ years old</li> <li>• Respondent must be US citizens of the states Tennessee (limitation to certain counties)</li> </ul>
Incidence rate:	We estimate and base our quote on 80% incidence after targeting 18+ year olds in certain counties of Tennessee
Duration of project:	Programming: 4 days Testing: 2 days Fieldwork: 5 days Data Tables: 2 days

### 3. Services provided by respondi

<ul style="list-style-type: none"><li>• Programming &amp; hosting questionnaire (inc. Monades)</li></ul>
<ul style="list-style-type: none"><li>• Inviting participants</li></ul>
<ul style="list-style-type: none"><li>• Incentivising respondents</li></ul>
<ul style="list-style-type: none"><li>• Managing field period</li></ul>
<ul style="list-style-type: none"><li>• Supplying raw data in Excel and SPSS</li></ul>

### 4. Services provided by Vivaldi

<ul style="list-style-type: none"><li>• Providing final questionnaire</li></ul>
<ul style="list-style-type: none"><li>• Providing images and any relevant media for the survey (<i>up to 12 images</i>)</li></ul>



## 5. Project fees

The costs of the services to be rendered are itemised in the table below:

n	LOI (min)	CPI (excl. Incentive)	Incentive	CPI (incl. Incentive)	Σ
620	5-7				0
Scripting and Hosting	Days	Set	SPSS	Σ	
	1.5				
Monades	Days	Set	SPSS	Σ	
	1				
<b>Total Project Fees</b>					

The prices are listed excl. VAT.

Our minimum project fee is

This quotation is valid until 25th December 2015.

## 6. Quality Standards

The online respondi panel is used solely for the purposes of market research and for no other purpose. Membership and participation is voluntary and follows a double opt-in registration process. The panel is actively and centrally managed by a professional panel team. In order to ensure a high standard of quality, the panel undergoes a continuous quality control process using a thorough scoring and controlling system.

Since we recruit via our own opinion platforms and the telephone, the focus is on intrinsic motivation thus preventing sample bias due to 'professional' respondents. A guaranteed panel response rate of 60% within the first seven days serves as proof of this high standard of quality.

We hold a large amount of information on each participant regarding their social demographics, Internet usage, interests, consumer behaviour, health, media usage, investments and mobility. In accordance with German data protection law, personal data and survey data are stored separately. We would be happy to provide you with further information regarding our response to the ESOMAR guidelines for online access panels.

respondi is a member of the following organizations and operates in strict accordance with their guidelines governing online research.



## 7. Other

respondi Limited assures its client that all information relevant to the project will be treated in the strictest confidence. In particular, no data such as the names, addresses or other details of target persons will be passed on to a third party. The costs for programming and hosting do not refer to survey methods using monadic testing, unless this is expressly mentioned in our quotation. If quotas are changed or there is a change in the incidence rates included in this quotation, we reserve the right to recalculate the costs. In such a case we will issue a new quotation. Furthermore, we reserve the right to recalculate the costs for a project if the screening questionnaire is to cover more than six questions (including demographic details).

In the case of projects not programmed by respondi and not carried out on the respondi Limited server (sample only), the client may have to close internal quotas. If in such cases the number of interviews carried out exceeds the requested sample size by more than 10% (or 200 interviews), these additional interviews will be billed separately. On completion of the project, all data will be destroyed, unless the client instructs respondi Limited to store the data for a future survey.

Irena Hempel

respondi Limited